

REMARKS

Introduction

Claims 1 - 12 were originally pending in the PCT application to which this application claims priority. On September 20, 2000, in a paper submitted to the International Preliminary Examining Authority at the European Patent Office, claim 11 was cancelled. Also, claim 12 was canceled by way of a Preliminary Amendment filed April 3, 2001. Claim 13 was added by way of Preliminary Amendment filed July 2, 2004. Claim 14 is added herein. Accordingly, claims 1 - 10 and 13 - 14 are presently pending in this application.

Claim Rejections

35 U.S.C. § 112

Claim 13 was rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement on the basis that Claim 13 includes subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventor had possession of the claimed invention at the time the application was filed. More specifically, the Examiner asserted that the specification supports the range of $S = .10 * L$ to $S = 0.35 * L$ but does not support the claimed range $S = .15 * L$ to $S = 0.35 * L$. Applicant respectfully traverses this rejection.

As a threshold matter, a description as filed is presumed to be adequate, unless or until sufficient evidence or reasoning to the contrary has been presented by the Examiner to rebut the presumption. MPEP 2163.04; see, e.g., In re Marzocchi, 439 F.2d 220, 224, 169 U.S.P.Q. 367, 370 (CCPA 1971). The Examiner, therefore, must have a reasonable basis to challenge the adequacy of

the written description. The Examiner has the initial burden of presenting by a preponderance of evidence why a person skilled in the art would not recognize in an applicant's disclosure a description of the invention defined by the claims. In re Wertheim, 541 F.2d 257, 263 (CCPA 1976).

Applicant respectfully submits that this presumption has not adequately been rebutted. The Examiner has done nothing more than to argue lack of literal support in the specification of the claimed range of $S = .15 * L$ to $S = 0.35 * L$, and this is not a proper rejection based on 35 U.S.C. § 112, first paragraph. Wertheim, 541 F.2d at 265. Applicant therefore respectfully submits reconsideration of the rejection under 35 U.S.C. § 112, first paragraph.

Moreover, applicant respectfully submits that the written description requirement of 35 U.S.C. § 112 has been satisfied. When a range disclosed in the specification is broader than the range that is claimed, the written description requirement may well be satisfied despite lacking literal support in the specification. Wertheim, 541 F.2d at 264-265. In Wertheim, for example, the patent at issue disclosed a process of freeze-drying coffee in which the range of coffee solids was 25-60%. One of the claims at issue in that case claimed a range of 35-60% of coffee solids, but the court nevertheless stated that the written description requirement was satisfied. Id. at 265. Similarly, in the present application, the specification discloses a range of $S = .10 * L$ to $S = 0.35 * L$. The specification also discloses a specific example of a wiper having a length, L , of 700mm and a spacing, S , of 150mm, thus having a ratio of $S = 0.214 * L$. (Pg. 5, ll. 121 and pg. 6, ll. 152-53.) Thus, the present application discloses a range that is broader than that which is set forth in claim 13, and under Wertheim, it follows that the written description requirement has been satisfied. Applicant therefore respectfully requests reconsideration of the rejection under 35 U.S.C. § 112, first paragraph.

35 U.S.C. § 102

Claim 13 was also rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent 3,780,395 to Quinlan et al. A claim is said to be anticipated where each and every limitation of the claim can be found in a single prior art reference. Applicant respectfully traverses this rejection.

Wiper Shown in Quinlan et al. '395 has Dimensions Outside Range of Claim 13

In support of the rejection of claim 13 under 35 U.S.C. § 102(b), the Examiner measured the spacing distance S and the length of the backbone L from the figures of the Quinlan et al. '395 patent. Based on these measurements, the Examiner asserts that the wiper disclosed in the Quinlan et al. '395 patent meets the criteria defined in claim 13. Applicant has reviewed these calculations, but must respectfully disagree. Applicant respectfully submits that the Quinlan et al. '395 patent merely discloses a wiper having a spacing distance, S , of 12.7 mm and a total length, L , of 138.11 mm, making S equal to $0.09 \cdot L$. Thus, the Quinlan et al. '395 patent does not disclose or suggest a wiper having a spacing distance, S , falling within the range of $0.15 \cdot L$ and $0.35 \cdot L$ as claimed in claim 13. As such, the wipers disclosed in the Quinlan et al. '395 patent does not apply improved pressure distribution across the length of the wiper similar to those constructed according to claim 13 of the patent application. Therefore, applicant respectfully requests reconsideration of the rejection of claim 13 under 35 U.S.C. § 102(b).

Drawings of Quinlan et al. '395 Are Not to Scale and Cannot be Properly Relied Upon in Support of Rejection of Claim 13

Assuming *arguendo* that physical measurements taken from the drawings of the Quinlan et al. '395 patent met the criteria of claim 13, a rejection based on measurements taken from a patent drawing would still be improper. This is because patent drawings are generally not made to scale and include no dimensions. When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurements of the drawings are of little value. MPEP § 2125. “[I]t is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.” Hockerson-Halberstadt, Inc. v. Avia Group Int'l, 222 F.3d 951, 956 (Fed. Cir. 2000).

None of the drawings of the Quinlan '395 patent include dimensions. In support of the rejection, the Examiner does not cite where the reference states that the drawings are to scale. Applicant has reviewed the reference and found that there is no mention in the Quinlan et al. '395 patent that the drawings are to scale. This makes sense since the wiper system disclosed therein would not be functional or practical if actually manufactured at the scale shown in the figures. In view of these facts and the controlling authority, applicant respectfully submits that the dimensional measurements of the wipers shown in the drawings of Quinlan et al. '395 patent may not be relied upon in support of the contention that the patent discloses a windscreen wiper having a spacing distance dimension, S, falling within the range of $0.15 \cdot L$ and $0.35 \cdot L$. MPEP §2125. Thus, applicant respectfully submits that the Quinlan et al. '395 patent does not anticipate or render obvious the invention described in claim 13 of the patent application. Therefore, applicant respectfully requests reconsideration of the rejection of claim 13 under 35 U.S.C. § 102(b).

35 U.S.C. § 103

Claims 1-2 and 5-10 were rejected under 35 U.S.C. § 103 as being unpatentable over the Quinlan et al. '395 patent in view of U.S. Patent No. 5,485,650 to Swanepoel. Furthermore, claims 1-10 were rejected under 35 U.S.C. § 103 as being unpatentable over U.S. Patent No. 3,751,754 to Quinlan et al. in view of the Swanepoel '650 patent. Also, claims 1-6 and 8-10 were rejected under 35 U.S.C. § 103 as being unpatentable over the Swanepoel '650 patent in view of the Quinlan et al. '395 patent as well as being unpatentable over the Swanepoel '650 patent in view of the Quinlan '754 patent. Applicant respectfully traverses these rejections.

The Windscreen Wiper Assembly of the Present Invention

The windscreen wiper of the present invention as defined in independent claim 1 is directed toward a windscreen wiper having an elongate, curved backbone made out of a single, unitary, resiliently flexible beam. A force applying member is connected to the backbone at two spaced apart points. Spacing distance, S , between the points falls within a range between $0.1 * L$ and $0.35 * L$, where L is the total length of the backbone, and both S and L are expressed in millimeters. The curved shape of the backbone, the resiliently flexible material of the backbone, and the disclosed range of S allows the windscreen wiper of the present invention to achieve improved pressure distribution across the length of the wiper.

In another aspect, the present invention as defined in independent claim 2 is directed toward a windscreen wiper having an elongate, curved backbone made out of a single, unitary, resiliently flexible beam. A force applying member is connected to the backbone at two spaced apart points. A ratio, R , of the spacing distance, S , to the total length of the backbone, L , falls within a range

between 0.1 and 0.35, where S and L are expressed in the same unit of measure. The curved shape of the backbone, the resiliently flexible material of the backbone, and the disclosed range of R allows the windscreen wiper of the present invention to achieve improved pressure distribution across the length of the wiper.

In still another aspect, the present invention as defined in independent claim 13 is directed toward a windscreen wiper having an elongate, curved backbone made out of a resiliently flexible material. A force applying member is connected to the backbone at two spaced apart points. Spacing distance, S, between the points falls within a range between $0.15*L$ and $0.35*L$, where L is the total length of the backbone, and both S and L are expressed in millimeters. The curved shape of the backbone, the resiliently flexible material of the backbone, and the disclosed range of S allows the windscreen wiper of the present invention to achieve improved pressure distribution across the length of the wiper.

***Wipers Shown in Quinlan Patents have
Dimensions Outside Range of Claims 1 & 2***

In a manner similar to the rejection of claim 13 discussed above, the rejection of claim 12 under § 103 depends on physical measurements of figures of both Quinlan et al. patents. Applicant has reviewed these calculations but must respectfully disagree.

Applicant respectfully submits that the Quinlan et al. '395 patent merely discloses a wiper having a spacing distance, S, of 12.7 mm and a total length, L, of 138.11 mm, making S equal to $0.09*L$. The Swanepoel '650 patent is silent as to a spacing distance, S. Thus, neither the Quinlan et al. '395 nor the Swanepoel '650 patents, either standing alone or in combination, discloses or

suggests a windscreen wiper having a spacing distance dimension, S , falling within the range of $0.1*L$ and $0.35*L$, where L is the total length dimension. Accordingly, applicant respectfully submits that the Quinlan et al. '395 patent in combination with the Swanepoel '650 patent does not render obvious the invention of claim 1. Similarly, neither the Quinlan et al. '395 nor the Swanepoel '650 patents discloses or suggests a windscreen wiper having a ratio, R , of the spacing distance dimension, S , to the total length dimension, L , falling within the range of 0.1 and 0.35. Thus, applicant respectfully submits that the Quinlan et al. '395 patent in combination with the Swanepoel '650 patent does not render obvious the invention of claim 2.

On the other hand, the Quinlan et al. '754 patent includes *fragmentary* illustrations of wipers. As such, the total length, L of the wipers shown in these figures is *indeterminate*. It follows then that the Quinlan et al. '754 patent does not disclose or suggest a windscreen wiper having a spacing distance dimension, S , falling within the range of $0.1*L$ and $0.35*L$, where L is the total length dimension. Thus, applicant respectfully submits that the Quinlan et al. '754 patent in combination with the Swanepoel '650 patent does not render obvious the invention of claim 1. Similarly, the Quinlan et al. '754 patent does not disclose a windscreen wiper having a ratio, R , of the spacing distance dimension, S , to the total length dimension, L , falling within the range of 0.1 and 0.35. Thus, applicant respectfully submits that the Quinlan et al. '754 patent in combination with the Swanepoel '650 patent does not render obvious the invention of claim 2.

Drawings of Quinlan Patents Are Not to Scale and Cannot be Properly Relied Upon in Support of Rejection of Claim 13

Nevertheless, and as noted above with respect to claim 13, even if the physical measurements taken from the drawings of the Quinlan et al. patents meet the criteria of claims 1 or 2, a rejection based on measurements taken from a patent drawing would still be improper. This is because patent drawings are generally not made to scale and include no dimensions. When the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurements of the drawings are of little value. MPEP §2125.

As noted above, none of the drawings of the Quinlan et al. patents includes dimensions. Applicant has reviewed each of these references and found that there is no mention in either of the Quinlan et al. patents that the drawings contained therein are to scale. In view of these facts and the controlling authority, applicant respectfully submits that the dimensional measurements of the wiper shown in these references may not be relied upon in support of the contention that the patents disclose a windscreen wiper having a spacing distance dimension, S , falling within the range of $0.1 \cdot L$ and $0.35 \cdot L$, where L is the total length dimension. Thus, applicant respectfully submits that the cited references do not render obvious the invention of claim 1. Similarly, applicant respectfully submits that the dimensional measurements of the wiper shown in these references may not be relied upon in support of the contention that the patents disclose a windscreen wiper having a ratio, R , of the spacing distance dimension, S , and the total length, L , falling within the range of 0.1 and 0.35. Thus, applicant respectfully submits that the cited references do not render obvious the invention of claim 2.

***No Motivation to Combine Quinlan et al. '395 with Swanepoel '650
or Quinlan et al. '754 with Swanepoel '650 Patent***

A rejection under 35 U.S.C. § 103 cannot be established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting the combination. See In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 U.S.P.Q. 657 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 U.S.P.Q. 929 (Fed. Cir. 1984).

Here, there is simply no teaching, suggestion, or incentive provided in the Quinlan et al. '395 patent or the Swanepoel '650 patent to combine any of their teachings. There is also no teaching, suggestion, or incentive provided in the Quinlan et al. '754 patent or the Swanepoel '650 patent to combine any of their teachings.

Furthermore, both of the Quinlan et al. patents disclose a wiper assembly with a blade body that includes a ***plurality of leaf springs***, and each patent touts the advantages of a wiper having multiple leaf springs. For example, at column 2, lines 50-67, the Quinlan et al. '395 patent explains that the leaf springs can be varied in curvature and length so that the wiper assembly exhibits the desired curvature and support. The Quinlan et al. '754 patent makes similar statements at column 2, lines 33-48. In contrast, the Swanepoel '650 patent discloses a windscreen wiper with a ***single*** curved backbone. Thus, since the Quinlan et al. patents each tout the advantages of including multiple varied leaf springs and the backbone of the Swanepoel '650 patent cannot be varied in this manner, the Quinlan et al. patents each ***teach away*** from combining their teachings with those of the Swanepoel '650 patent.

Because there is no teaching, suggestion, or incentive to combine the Quinlan et al. '395 patent and the Swanepoel '650 patent, and the Quinlan et al. '395 patent teaches away from their combination, applicant respectfully requests reconsideration of the rejections of claims 1 and 2 under 35 U.S.C. § 103 based on a combination of those references. Also, because there is no teaching, suggestion, or incentive to combine the Quinlan et al. '754 patent and the Swanepoel '650 patent, and the Quinlan et al. '754 patent teaches away from their combination, applicant respectfully requests reconsideration of the rejections of claims 1 and 2 under 35 U.S.C. § 103 based on a combination of those references.

Thus, for each of the reasons set forth above, applicant respectfully requests reconsideration of the rejections of claims 1 and 2 under 35 U.S.C. § 103. Claims 3-10 are ultimately dependent on either claim 1 or claim 2 and add perfecting limitations. Thus, applicant respectfully requests reconsideration of the rejections of claims 3-10 under 35 U.S.C. § 103.

New Claim 14

Claim 14 has been added to describe an invention that includes structure that is neither disclosed nor suggested by the Quinlan et al. '395, Quinlan et al. '754, or Swanepoel '650 patents. Applicant respectfully submits that no new matter has been added. Claim 14 incorporates all of the limitations of claim 1 and further describes that the force applying member is connected at one of the points to the backbone by means of a pin which is received in a longitudinal slot in the backbone so that relative longitudinal and pivotal movement between the pin and the backbone is permitted. Support for this additional limitation can be found on page 6, lines 137-140, of the specification.

As noted above, applicant respectfully submits that a rejection based on measurements taken from the drawings are improper under MPEP §2125. However, even if such a rejection was proper, it is clear that none of the wipers from the cited art has dimensions falling within the range of claim 14. Also, none of the cited references discloses a force applying member being connected at one of two points to a backbone by means of a pin which is received in a longitudinal slot in the backbone so that relative longitudinal and pivotal movement between the pin and the backbone is permitted. Indeed, the Swanepoel '650 patent discloses a force applying member that is connected to a backbone at a single point, thereby lacking a force applying member being connected at one of two points to a backbone by means of a pin which is received in a longitudinal slot in the backbone permitting relative longitudinal and pivotal movement between the pin and the backbone as claimed in claim 14. Also, the Quinlan '754 patent discloses an arm connector 13 that is connected to the blade body 15 so as to allow "canting attachment of the blade unit to the arm connector...[but] prevent[s] longitudinal movement." (Column 3, lines 35-42.) As such, the Quinlan '754 patent lacks a force applying member being connected at one of two points to a backbone by means of a pin which is received in a longitudinal slot in the backbone permitting relative longitudinal and pivotal movement between the pin and the backbone as claimed in claim 14. Moreover, the Quinlan '395 patent discloses a connector 38 with a base member 40 that is secured to the blade via screws 42 which are *threaded* into the leaf spring means 26. (Column 4, lines 47-68.) Accordingly, the Quinlan et al. '395 patent lacks a force applying member that is connected at one of two points to a backbone by means of a pin which is received in a longitudinal slot in the backbone permitting relative longitudinal and pivotal movement between the pin and the backbone as claimed in claim 14. As such, none of the cited prior art, either standing alone or in combination, discloses or

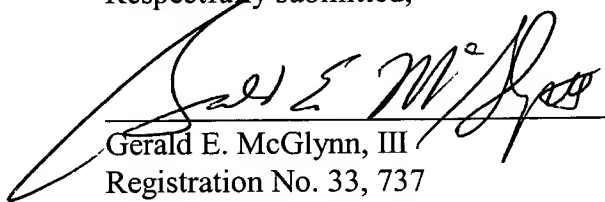
suggests the windscreen wiper of added claim 14. Therefore, applicant respectfully seeks allowance of added claim 14.

Conclusion

Independent claims 1, 2, 13 and 14 each recite structure that is not disclosed or suggested by the prior art and are patentably distinguishable from the subject matter of the references discussed above. Claims 2 - 10 are all ultimately dependent upon either independent claim 1 or 2, respectively and add further perfecting limitations. Applicant respectfully submits that the prior art references, alone or in combination, do not disclose or suggest the present invention. However, and even if they did, they could only be applied through hindsight after restructuring the disclosures of the prior art in view of the applicant's invention. Accordingly, applicant respectfully solicits the allowance of the claims pending in this case.

If the Examiner has any questions or would like to discuss any of the matters set forth above, the Examiner is encouraged to contact undersigned counsel at the telephone number indicated below.

Respectfully submitted,



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